IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No 413 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE B.J.SHETHNA sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

PRAVINBHAI DHANJIBHAI NINAMA

Versus

STATE OF GUJARAT

Appearance:

1. Appeal from Order No. 413 of 1998

MR JV JAPEE for Petitioner No. 1

MR KC SHAH, A.G.P. for Respondent No.1

RULE SERVED for Respondents No. 6-10

MR GIRISH D BHATT for Respondents No. 2-5

CORAM : MR.JUSTICE B.J.SHETHNA

Date of decision: 25/10/2001

ORAL JUDGEMENT

1. The appellant - plaintiff has filed this Appeal

challenging the impugned order dated 30.6.1998 passed by the learned 3rd Joint Civil Judge (SD), Himatnagar in Special Civil Suit No.58 of 1995 whereby the learned trial Judge dismissed the Application Ex.5.

2. Initially the notice was ordered to be issued on this Appeal on 27.8.1998. Along with this Appeal, Civil Application No.7750 of 1998 was filed. Notice was ordered to be issued on 27.8.1998 making it returnable on 15.9.1998 with ad.interim injunction restraining the respondents No.1,2 to 5 and 10 from disturbing the possession of the Appellant. The said ad.interim relief was confirmed on 25.9.1998 in absence of the respondents as though served no one appeared for them. Thus, interim relief is operating in favour of the appellant till today.

3. Learned Counsel Shri Jappi for the appellant submitted that when the interim relief is operating in favour of the appellant since long then without going into the merit, legality and validity of the impugned order passed by the trial Court this Appeal be disposed of with a direction to the learned trial Judge to decide the main Civil Suit as early as possible and till then the interim relief granted by this Court may be continued.

4. In the instant case the Suit is of 1985 filed in the Court of learned Civil Judge (SD), Himatnagar, which is old one, and by now it must have become ripe for hearing. Considering the facts and circumstances of the case, I am of the considered opinion that the request made by Shri Jappi for the appellant be granted, though it was opposed by Shri Bhatt for the contesting respondents. If this Appeal had come up immediately after its admission for final hearing perhaps this would have gone into the legality and validity of the impugned order, but under the circumstances this Appeal is disposed of without going into the legality and validity of the impugned order passed by the trial Court with a direction to the trial Court to decide the main Special Civil Suit No.58 of 1995 as early as possible and in any case not later than 31st December, 2002. Till then the interim relief granted by this Court in Civil Application No.7750 of 1998 shall continue. The parties shall fully cooperate with the final disposal of the Suit. It is made clear that while deciding the Suit the learned Judge shall not be influenced with the observations made in the impugned order dated 30.6.1998 passed by his predecessor below Ex.5 and he shall decide the Suit on the strength of the evidence led before him.

sd/-

Date : October 25, 2001 (B.J.Shethna, J.)

sas